



IN THE DISTRICT COURT OF TULSA COUNTY
STATE OF OKLAHOMA

DISTRICT COURT
FILED

FEB 25 2011

JENNIFER ANDRES FEB 25 PM 4:04

Plaintiff,

v.

OKLAHOMA FARM BUREAU MUTUAL
INSURANCE COMPANY, a Domestic
Corporation,

Defendant.

Case No.:

CJ-2011-01124

ATTORNEY LIEN CLAIMED

SALLY HOWE SMITH, COURT CLERK
STATE OF OKLA. TULSA COUNTY

CARLOS J. CHAPPELLE

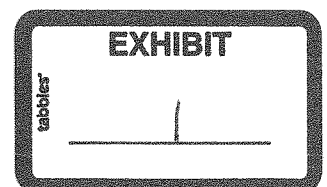
PETITION

COMES NOW the Plaintiff, Jennifer Andres, by and through her attorney of record, Donald E. Smolen, II, of Smolen, Smolen & Roytman, PLLC, and for her cause of action against Oklahoma Farm Bureau Mutual Insurance Company, states as follows:

1. Plaintiff resides in Tulsa County, Oklahoma.
2. Defendant, Oklahoma Farm Bureau Mutual Insurance Company ("OFB"), is a domestic for profit corporation conducting regular business in Tulsa County, Oklahoma.
3. The acts, occurrences and omissions complained of herein occurred in Tulsa County, Oklahoma.
4. This court has jurisdiction and venue is proper in Tulsa County, Oklahoma.

STATEMENT OF FACTS

5. Paragraphs 1-4 are incorporated herein by reference.
6. Defendant OFB sells various policies of homeowners' insurance here in the State of Oklahoma.



7. Defendant OFB sold Plaintiff a policy of homeowners' insurance coverage providing coverage including, but not limited to, damages to her dwelling, other structures, personal property, additional living expense and loss of rents.

8. On or around May 16, 2007, Plaintiff's home was seriously damaged when sewage backed up from pipes owned and maintained by the City of Tulsa, causing extensive damage to Plaintiff's home.

9. Plaintiff filed a claim with Defendant, her home insurance policy carrier.

10. Said claim was denied and Plaintiff filed actions for bad faith and breach of contract in the Tulsa County District Court, State of Oklahoma, Case No. CJ-2008-2879.

11. Defendant filed a motion for summary judgment on all claims and the Court in CJ-2008-2879 entered judgment for Defendants.

12. On appeal, the Oklahoma Court of Civil Appeals affirmed judgment for Defendant on the bad faith claim, but reversed as to the breach of contract claim and entered judgment for Plaintiff.

13. The Supreme Court denied Defendant's Petition for *Certiorari* to review the Court of Civil Appeals opinion and mandate issued December 4, 2009.

14. Subsequent to the mandate issued December 4, 2009, Defendant has made no attempt to investigate the loss or make Plaintiff whole.

15. Plaintiff has continually made demand on the Defendant for payment of policy benefits under the aforementioned policy of homeowners insurance.

16. Subsequent to the mandate filed December 4, 2009, Plaintiff has relied on Defendant to properly handle the claim(s) and make payment on the applicable claims pursuant to the aforementioned insurance policy. Plaintiff has made due demand on the Defendant for payment of

the policy benefits and otherwise met all of the conditions precedent for payment of claims under the insurance policy.

17. Defendant has unreasonably failed and refused to pay any benefits under the insurance policy.

CLAIMS FOR RELIEF

18. Paragraphs 1-17 are incorporated herein by reference.

19. In its handling of Plaintiff's claim subsequent to the ruling of the Oklahoma Court of Civil Appeals and mandate promulgated on December 4, 2009, Defendant has breached its duty to deal fairly and in good faith towards Plaintiff in the following respects:

- a. Failing to pay Plaintiff the insurance benefits that she was entitled to under the policy at the time when Defendant knew the Plaintiff was entitled to those benefits;
- b. Withholding payment of benefits to the Plaintiff knowing that the Oklahoma Court of Civil Appeals and the Oklahoma Supreme Court had deemed Plaintiff's claim for those benefits valid;
- c. Refusing to honor Plaintiff's claim without legitimate, arguable reason and wholly lacking any evidence or support for its refusal;
- d. Unreasonably denying Plaintiff's claim for benefits without reasonable basis;
- e. Refusing to pay Plaintiff's claim for reasons contrary to the express provisions of the law;
- f. Intentionally and recklessly misapplying the provisions of the applicable homeowners' insurance policies;

- g. Using its unequal wealth and bargaining position to overwhelm and take advantage of the Plaintiff to effect an economic gain for the Defendant by not paying an amount that it owed by virtue of the Order set forth by the Oklahoma Court of Civil Appeals;
- h. Failing to properly investigate Plaintiff's claim subsequent to the mandate set forth on December 4, 2009;
- i. Failing to adopt and implement reasonable standards for the prompt investigation and handling of claims arising under the policies subsequent to December 4, 2009;
- j. Failing to attempt to act in good faith to effectuate a prompt, fair settlement for the Plaintiff's claim once it was on notice said payment was due and owing.

20. As a direct result of Defendant's breach of the implied covenant of good faith and fair dealing, Plaintiff has suffered the loss of the insurance policy benefits, mental and emotional distress, anxiety, embarrassment and financial hardship, all of which are in excess of seventy-five thousand dollars (\$75,000.00.)

21. Plaintiff has retained an attorney to prosecute this action and is thus entitled to a reasonable attorney fee as well as the costs expended in pursuit of this litigation.

22. Defendant has acted intentionally, maliciously and in reckless disregard for the rights of the Plaintiff. As a result, the Plaintiff is entitled to recover punitive damages against the Defendant for these actions.

WHEREFORE, Plaintiff prays this Court enter judgment against Defendant OFB, and grant her the relief sought including, but not limited to, actual damages in excess of seventy-five thousand dollars (\$75,000.00), costs, pre-judgment interest, attorney's fees, punitive damages in excess of

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seventy-five thousand dollars (\$75,000.00), post-judgment interest and all other relief deemed appropriate by this Court.

Respectfully submitted,

SMOLEN, SMOLEN & ROYTMAN, PLLC



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